

Indiana Department of Education

Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1912.02
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	May 9, 2002
DATE OF REPORT:	June 7, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	September 10, 2002

COMPLAINT ISSUES:

Whether the Franklin Township Community School Corporation and RISE Special Services violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written during the first semester of the 2001-2002 school year.

511 IAC 7-29-1(d)(1) for suspending the student for more than 10 consecutive days during the first semester of the 2001-2002 school year.

511 IAC 7-29-1(f) by failing to provide educational services after the student incurred more than 10 cumulative days of suspension in the same school year.

511 IAC 7-27-4(4) and 511 IAC 7-29-1(j)(1) and (2)(A)(B) and (C) by unilaterally changing the student's educational placement without benefit of a case conference committee meeting as a result of suspending the student for more than 10 consecutive instructional days and as a result of the student's days of suspension cumulating to more than 10 instructional days in the school year.

During the course of this investigation an additional issue was identified:

511 IAC 7-17-72 (1) through (7) by failing to designate a single individual as the student's teacher of record and with regard to the school's failure to notify the student's new teacher of record for learning disabilities that the student was on her caseload until the second semester of the 2001-2002 school year.

FINDINGS OF FACT:

1. The Student is fifteen years old and attends the local high school (the "School"). The Student is eligible for special education and related services as a student with a learning disability (primary) and an emotional disability (secondary).
2. The complainant asserts the Student's IEP was not implemented for most of the first semester of the 2001-2002 school year. The Student's IEP dated April 23, 2001, indicates the Student is placed in a general education setting and is to receive special education and related services outside the general education classroom for less than 21% of the instructional day. The Student was to receive two 20-minute emotional disability consultations each month, as well as 50 minutes of services each day in the resource room for

the learning disability. The IEP lists two individuals as the Student's teacher of record (TOR), and another individual as the Student's teacher of service for the emotional disability.

3. Due to personnel changes, neither of the TORs identified on the Student's April 2001 IEP could serve as the Student's TOR when the 2001-2002 school year started. According to the School's Special Education Department Chair, the individual listed as the Student's teacher of service for the emotional disability consultation services served as the Student's TOR who checked on the Student's progress approximately one time per week in addition to providing the two monthly sessions of ED consultation. However, the Student did not receive special education services related to the Student's learning disability in a resource room setting for one 50 minute period per day until the decision was made at a case conference committee meeting on December 14, 2001, to assign the Student to Curriculum Tutoring in the resource room during fourth period. The School was unable to provide documentation to demonstrate that the teacher of service performed the TOR's responsibilities of informing the Student's teachers of their responsibilities for implementing the Student's IEP. The Department Chair stated that the IEP was present at the School if any of the Student's teachers wanted to read it. The School asserts that the IEP was followed because the Student was receiving passing grades.
4. A teacher licensed to teach students with learning disabilities was assigned to serve as the Student's TOR at the beginning of the second semester and is listed as the Student's TOR for 2002-2003 school year in the IEP dated April 29, 2002. This TOR received the Student's records, and the Student was officially included on the TOR's caseload at the start of the second semester.
5. Attendance records show that the Student was suspended various times throughout the 2001-2002 school year, and the longest single period of suspension was five instructional days.
6. Attendance records show that the Student was suspended for fourteen cumulative days during the first semester and one day during the second semester. The eleventh cumulative day of suspension occurred on November 12, 2001. The Student was also suspended on December 12, 13, and 14, 2001. The School did not provide any educational services on these four days of suspension. The School made arrangements for the Student to keep up with assignments for the single day of suspension during the second semester.
7. The parent alleges that the Student was to be suspended from May 7 through May 13, 2002. This allegation is based on a phone call the parent received from the School's Special Education Department Chair on May 7, 2002. The Department Chair told the parent that a recommendation by the ED teacher to the Dean of Students to suspend the Student for four recent referrals was going to be made. The Dean of Students makes the decision whether to suspend a student and did not suspend the Student. However, the parent misunderstood the phone conversation with the Department Chair and thought the Student was suspended. The parent was concerned the Student would miss too much class and not pass thus depriving the Student of the chance to get credit towards graduation for these classes. The parent considered this a change of placement. As a result of the misunderstanding, the parent kept the Student home for two days, May 7 and 8, 2002, unbeknownst to the Dean of Students. The Dean discovered this on May 8, 2002, and the Student came back to school May 9, 2002. The missed days of school did not count against the Student, and the Student was allowed to make up all missed assignments.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate that the Student's IEP, dated April 23, 2001, was not implemented as written during the first semester of the 2001-2002 school year, specifically, with regard to services related to the Student's learning disability. The Student did not have a teacher of record licensed in learning

disabilities with the responsibility of implementing the School's learning disabilities program on the Student's behalf, including curriculum tutoring one time per day for fifty minutes, for the entire first semester. Therefore, a violation of 511 IAC 7-27-7(a) is found.

2. Finding of Fact #4 shows that the Student was not suspended for a period of more than ten consecutive instructional days during the 2001-2002 school year. No violation of 511 IAC 7-29-1(d) (1) is found.
3. Finding of Fact #5 indicates that the School did not provide educational services to the Student subsequent to the Student's tenth cumulative day of suspension during the 2001-2002 school year. Therefore, a violation of 511 IAC 7-29-1(f) is found.
4. Finding of Fact #6 indicates that the School did not unilaterally change the Student's educational placement. The Student was never suspended for more than ten consecutive instructional days. Communication between the parent and the School, that the parent believed was a suspension resulting in a change in placement, was a miscommunication. The Student was not suspended, nor was the Student penalized for the two day absence resulting from the miscommunication. Therefore, no violation of 511 IAC 7-27-4(4), 511 IAC 7-29-1(j)(1) and (2)(A)(B) and (C) is found.
5. Findings of Fact #3 and #4 reflect that, although individuals were listed as the TOR on the Student's April 2001 IEP, neither served in this capacity during the first semester of the 2001-2002 school year. A teacher licensed in the area of learning disabilities was not assigned until the second semester of the school year. Therefore, a violation of 511 IAC 7-17-72 is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Franklin Township Community School Corporation and RISE Special Services shall:

1. Convene a CCC meeting to determine the nature and extent of compensatory services to be provided to the Student as the result of the School's failure to provide daily resource room services. The CCC Report shall clearly document the CCC's consideration of and recommendation regarding compensatory services. A copy of the CCC report and revised IEP shall be sent to the Division no later than September 6, 2002.
2. Review and, if necessary, revise current procedures for ensuring that a teacher of record is assigned for each student with a disability and that each assigned teacher of record is appropriately licensed to work the student. Submit an assurance statement that the procedures have been reviewed, that such procedures ensure compliance with the requirements of 511 IAC 7-17-72, and that an appropriately licensed teacher of record will be assigned to each student with a disability. A copy of the assurance statement shall be submitted to the Division no later than September 6, 2002.
3. Provide in-service training to all teachers of record and other special education personnel regarding the duties and responsibilities of a teacher of record as required by Article 7. The School shall send notes, materials, handouts, and a copy of the attendance sheet to the Division no later than September 6, 2002.
3. Send a written reminder to all appropriate personnel regarding the requirements of 511 IAC 7-29-1(f) and (h) regarding the School's responsibility for providing educational services to special education students who have been suspended for more than ten cumulative days during a school year. A copy of the written

memorandum and a list of personnel to whom the memorandum was sent shall be submitted to the Division no later than September 6, 2002.